IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/12/2003

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THE HONOURABLE MR. JUSTICE M.THANIKACHALAM

CRL.O.P.No.3532 of 2003 and CRL.O.P.No. 3536 of 2003
and
CRL.M.P.Nos.1233 and 1237 of 2003

1.M/s.Caravan Clothing Company (P)
Limited.
2.Mr. M.Balasubramanian ... Petitioners in
3.Mr. D.Hiran Kumar Crl.OP.3532/03

R.Varusai Mohamed ... Petitioner in
Crl.OP.3536/03

-Vs-

M/s.Anbu Textiles, through
its power of attorney ... Respondent in
Thiru A.Velmurugan both petitions.

Criminal Original petitions are filed under Section 482 Cr.P.C to call for the records in C.C.No.587 of 2002 filed by the respondent against the petitioners in both the cases on the file of the Judicial Magistrate No.1, Madurai and quash the same.

For petitioners : Mr.S.K.Mohamed Yousuf, in
Crl.OP.3532/2003
Mr. N.Subramanian, in
Crl.OP.3536/2003

For respondents : Mr. N.Ananthapadmanabhan,in
both petitions.

:COMMON ORDER

This order shall dispose of the above two Crl.O.Ps.

2. The respondent/complainant in both the cases, has filed a complaint alleging that all the four accused are liable to be punished under Section 138 of the Negotiable Instrument Act, since the cheque issued by them, was dishonoured, when tendered for collection, and even, after complying with the mandatory provision of issue of notice, they failed to pay the cheque amount and in this view, they should be dealt with accordingly.

3. The accused/petitioners 1 to 3 have filed Crl.O.P.No.3532 of 200 3 and 4th accused/petitioner has filed Crl.O.P.No.3236 of 2003 for quashing the proceedings, as if, no case is made out against them; that the conditions contained in the purchase order dated 27.08.2002 is violated; that the cheque in question had been issued towards sale price of the first 5,000 metres cloth is incorrect, etc.

4. The first accused company had dealings with the complainant/ respondent company in purchasing some cloths. In the first accused company, accused 2 to 4 are Directors. As per the complaint, the first accused company offered to purchase specialised fabrics and in response to that offer, the complainant company agreed to supply the required materials. In pursuance of the same, the first accused company accepted the terms and conditions of the complainant company, followed by supply of goods on the letter of credit basis. It seems, thereafter, the first accused company has not paid amount and there was a balance of Rs.1,50,000/-. In order to discharge the liability, it seems, the second accused, representing the first accused company, issued three cheques dated 07.09.1992, 12.09.1992 and 16.09.1992 for a sum of Rs.1,50,000/-, Rs.1,00,000/- and Rs.75,000/- respectively, drawn in the Bank, where the accused company is maintaining their account.

5. The complainant company presented the cheque dated 07.09.1992 bearing No.613342 for a sum of Rs.1,50,000/-, for collection through their bank. The cheque was not honoured, because of the fact that the drawer of the cheque has not provided sufficient fund, in the account to honour the cheque. Thereafter, as mandated under the law, the holder of the cheque issued notice, demanding the amount due under the above said cheque, but the same was not complied with by paying the amount. It seems, there is no reply also. Therefore, as stated above, a private complaint has been filed, and the same was taken on file by the Judicial Magistrate No.1, Madurai in C.C.No.587 of 2002. Now, the case is pending before the Judicial Magistrate No.1, Madurai. At this stage, these two petitions are filed separately, for quashing the entire proceedings in C.C.No.587 of 2002.

6. The learned counsel for the petitioners submits that, as far as Accused 3 and 4 are concerned, there are no materials to implicate them as accused or to say that the case will end in conviction, even if the trial is allowed to proceed. As seen from paragraph 5 of the complaint, it is stated that, as per the purchase order, Mr.D.Hiran Kumar, that is the third accused, who is one of the Director of the first accused company, undertook the liability to open letters of credit in favour of the complainant company on or before 06.09.2002, instead of opening it on 27.08.2002 as demanded by the complainant company. Except this allegation, I do not find any other allegation, attracting the ingredients of Section 141 of the Negotiable Instruments Act, so as to say, that the third accused/third petitioner was also incharge of the first accused company or attending the day to day affairs or having entire control of the company. It is also not the case of the complainant, in the complaint, that the cheque was issued with the knowledge of the third accused or the offence was committed with the connivance of the

third accused. In the absence of any such allegation, convicting the third accused is very remote and therefore, I feel the complaint is liable to be quashed as far as the third accused is concerned, on the ground of absence of specific averments, attracting the ingredients under Section 141 of the Negotiable Instruments Act.

7. As far as the petitioner in Crl.O.P.No.3356 of 2003, who is the fourth accused, is concerned, it is his case that he resigned from the first accused company on 02.03.2002 and therefore, he is not liable to answer the claim, made by the complainant, on the basis of the dishonoured cheque. In support of the above contention, form 32 was also produced, which would indicate that the fourth accused has resigned from the Directorship on 02.03.2002, i.e. six months even prior to the date of issue of the cheque. The fact remains, the cheque was issued on 07.09.2003. This fact is fairly conceded by the learned counsel for the complainant/respondent. Even otherwise also, as far as A.4 is concerned, I find no allegation to implicate him as an accused, so as to say that he is also liable to be dealt with under Section 1 38 of the Negotiable Instruments Act. In this view, the complaint against the fourth accused is also not maintainable, since it will not end in conviction, even if the trial is allowed to proceed.

8. As far as A.1 and A.2 are concerned, I find no merit to allow their petition, for quashing the proceedings. The complaint reveals that the first accused company entered into an agreement with the complainant company for the purchase of the goods and admittedly, the cheque was issued by the second accused, who is managing the first accused company, being the signatory. Therefore, 1 and 2 accused cannot escape from the liability, on the ground that there was violation of conditions or something like that.

Even, if there is any violation regarding the agreement or as per the invoice, it is a matter, to be decided only after recording the evidence. On that ground, quashing the complaint does not arise for consideration.

9. For the foregoing reasons, both the petitions are allowed to the above said extent, quashing the proceedings in C.C.No.587 of 2002, as far as Accused 3 and 4 alone are concerned. The trial Court is directed to proceed against accused 1 and 2 according to law and dispose of the same within six months from the date of receipt of a copy of this order. Consequently, connected Crl.M.Ps are closed.

sbi

To
1.The Judicial Magistrate No.I,
Madurai.

2.The Public Prosecutor,
High Court, Madras.